


IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NORTH CAROLINA  
SOUTHERN DIVISION  
No. 7:16-CR-120-D

UNITED STATES OF AMERICA, )  
 )  
 v. )  
 )  
 DAVID ELIJAH SMITH, )  
 )  
 Defendant. )

**ORDER**

Pursuant to Federal Rule of Criminal Procedure 32(h), the court hereby notifies the parties that it is contemplating an upward departure under U.S.S.G. § 4A1.3(a)(1). The court doubts whether defendant's Delaware third-degree burglary conviction qualifies as a predicate offense under the Armed Career Criminal Act. See 18 U.S.C. § 924(e)(2)(B). Reliable information, however, appears to indicate that defendant's criminal history underrepresents the seriousness of the defendant's criminal history or the likelihood that he will commit other crimes. See Fed. R. Crim. P. 32(h); U.S.S.G. § 4A1.3(a)(1).

SO ORDERED. This 13 day of June 2018.

  
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JAMES C. DEVER III  
Chief United States District Judge